

CHAPTER 138

(House Bill 117)

AN ACT concerning

Real Property - ~~Installation of Solar Panels Collector Systems - Clarification~~ Restriction on Use and Solar Easement

FOR the purpose of ~~defining certain terms relating to the application of a restrictive covenant as to the installation of solar collection panels in certain locations; prohibiting a condominium council of unit owners from establishing bylaws that impose restriction on use from imposing unreasonable limitations on the installation of a solar collection panels in collector system under certain locations; establishing the right of a condominium unit owner or a lot owner in a development to negotiate with neighboring unit owners or lot owners to obtain a solar easement for a unit or lot that has installed a solar energy system; establishing certain requirements for an instrument creating a solar easement circumstances; authorizing a property owner who has installed or intends to install a solar collector system to negotiate to obtain a solar easement in writing; requiring any written instrument creating a solar easement to include certain provisions; requiring a written instrument creating a solar easement to be recorded under certain circumstances; exempting a restriction on use on certain historic properties from the applicability of this Act; defining certain terms; and generally relating to enabling the installation and access to sunlight of solar energy collector systems.~~

BY repealing and reenacting, with amendments,
Article – Real Property
Section 2-119, ~~11-104(e)~~, and ~~11-125(f)~~
Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)

~~BY repealing and reenacting, without amendments,
Article – Real Property
Section 11-104(a)
Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)~~

~~BY adding to
Article – Real Property
Section 11-125(f) through (h) and 11B-111.6
Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Real Property

2–119.

(a) **(1) IN THIS SECTION, ~~“RESTRICTIVE COVENANT” INCLUDES THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~**

(2) “RESTRICTION ON USE” INCLUDES ANY COVENANT, RESTRICTION, OR CONDITION CONTAINED IN:

~~(1)~~ **(I) A DEED;**

~~(2)~~ **(II) A DECLARATION;**

~~(3)~~ **(III) A CONTRACT;**

~~(4)~~ **(IV) THE BYLAWS OR RULES OF A CONDOMINIUM OR HOMEOWNERS ASSOCIATION;**

~~(5)~~ **(V) A SECURITY INSTRUMENT; OR**

~~(6)~~ **(VI) ANY OTHER INSTRUMENT AFFECTING:**

~~(I)~~ **1. THE TRANSFER OR SALE OF REAL PROPERTY; OR**

~~(II)~~ **2. ANY OTHER INTEREST IN REAL PROPERTY.**

(3) “SOLAR COLLECTOR SYSTEM” MEANS A SOLAR COLLECTOR OR OTHER SOLAR ENERGY DEVICE, THE PRIMARY PURPOSE OF WHICH IS TO PROVIDE FOR THE COLLECTION, STORAGE, AND DISTRIBUTION OF SOLAR ENERGY FOR ELECTRICITY GENERATION, SPACE HEATING, SPACE COOLING, OR WATER HEATING.

(4) “SOLAR EASEMENT” MEANS AN INTEREST IN LAND THAT:

(I) IS CONVEYED OR ASSIGNED IN PERPETUITY; AND

(II) LIMITS THE USE OF THE LAND TO PRESERVE THE RECEIPT OF SUNLIGHT ACROSS THE LAND FOR THE USE OF A PROPERTY OWNER’S SOLAR COLLECTOR SYSTEM.

(B) (1) ~~A restrictive covenant~~ **RESTRICTION ON USE** regarding land use, ~~which becomes effective after July 1, 1980,~~ may not impose or act to impose unreasonable limitations on the installation of ~~solar collection panels~~ **A SOLAR COLLECTOR SYSTEM** on the roof or exterior walls of improvements, **PROVIDED THAT THE PROPERTY OWNER OWNS OR HAS THE RIGHT TO EXCLUSIVE USE OF THE ROOF OR EXTERIOR WALLS.**

(2) ~~AN~~ **FOR PURPOSES OF PARAGRAPH (1) OF THIS SUBSECTION, AN UNREASONABLE LIMITATION INCLUDES A LIMITATION THAT:**

(I) **SIGNIFICANTLY INCREASES THE COST OF THE SOLAR COLLECTOR SYSTEM; OR**

(II) **SIGNIFICANTLY DECREASES THE EFFICIENCY OF THE SOLAR COLLECTOR SYSTEM;**

~~(III) SIGNIFICANTLY DECREASES THE SPECIFIED PERFORMANCE OF THE SYSTEM; OR.~~

~~(IV) DOES NOT ALLOW FOR AN ALTERNATIVE SYSTEM OF COMPARABLE COST, EFFICIENCY, AND ENERGY CONSERVATION BENEFITS.~~

(C) (1) **A PROPERTY OWNER WHO HAS INSTALLED OR INTENDS TO INSTALL A SOLAR COLLECTOR SYSTEM MAY NEGOTIATE TO OBTAIN A SOLAR EASEMENT IN WRITING.**

(2) **ANY WRITTEN INSTRUMENT CREATING A SOLAR EASEMENT SHALL INCLUDE:**

(I) **A DESCRIPTION OF THE DIMENSIONS OF THE SOLAR EASEMENT EXPRESSED IN MEASURABLE TERMS, INCLUDING VERTICAL OR HORIZONTAL ANGLES MEASURED IN DEGREES OR THE HOURS OF THE DAY ON SPECIFIED DATES WHEN DIRECT SUNLIGHT TO A SPECIFIED SURFACE OF A SOLAR COLLECTOR SYSTEM MAY NOT BE OBSTRUCTED;**

(II) **THE RESTRICTIONS PLACED ON VEGETATION, STRUCTURES, AND OTHER OBJECTS THAT WOULD IMPAIR THE PASSAGE OF SUNLIGHT THROUGH THE SOLAR EASEMENT; AND**

(III) **THE TERMS UNDER WHICH THE SOLAR EASEMENT MAY BE REVISED OR TERMINATED.**

(3) A WRITTEN INSTRUMENT CREATING A SOLAR EASEMENT SHALL BE RECORDED IN THE LAND RECORDS OF THE COUNTY WHERE THE PROPERTY IS LOCATED.

[(b)] ~~(C)~~ **(D)** This section does not apply to a ~~restrictive covenant~~ **RESTRICTION ON USE** on historic property that is listed by:

~~(1) The Maryland Inventory of Historic Properties; or~~

~~(2) The~~ **IN, OR DETERMINED BY THE DIRECTOR OF THE MARYLAND HISTORICAL TRUST TO BE ELIGIBLE FOR INCLUSION IN, THE** Maryland Register of Historic Properties.

~~11-104.~~

~~(a) The administration of every condominium shall be governed by bylaws which shall be recorded with the declaration. If the council of unit owners is incorporated, these bylaws shall be the bylaws of that corporation.~~

~~(c) (1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE bylaws also may contain any other provision regarding the management and operation of the condominium including any restriction on or requirement respecting the use and maintenance of the units and the common elements.~~

~~(2) THE BYLAWS MAY NOT IMPOSE OR ACT TO IMPOSE UNREASONABLE LIMITATIONS ON THE INSTALLATION OF SOLAR COLLECTION PANELS ON THE ROOF OR EXTERIOR WALLS OF A UNIT.~~

~~(3) AN UNREASONABLE LIMITATION INCLUDES A LIMITATION THAT:~~

~~(I) SIGNIFICANTLY INCREASES THE COST OF THE SYSTEM;~~

~~(II) SIGNIFICANTLY DECREASES THE EFFICIENCY OF THE SYSTEM;~~

~~(III) SIGNIFICANTLY DECREASES THE SPECIFIED PERFORMANCE OF THE SYSTEM; OR~~

~~(IV) DOES NOT ALLOW FOR AN ALTERNATIVE SYSTEM OF COMPARABLE COST, EFFICIENCY, AND ENERGY CONSERVATION BENEFITS.~~

~~11-125.~~

~~(F) (1) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) "SOLAR EASEMENT" MEANS AN INTEREST IN LAND THAT:~~

~~(I) IS CONVEYED OR ASSIGNED IN PERPETUITY; AND~~

~~(II) LIMITS THE USE OF THE LAND TO PRESERVE THE RECEIPT OF SUNLIGHT ACROSS THE LAND FOR THE USE OF A UNIT OWNER'S SOLAR ENERGY SYSTEM.~~

~~(3) "SOLAR ENERGY SYSTEM" MEANS:~~

~~(I) A SOLAR COLLECTOR OR OTHER SOLAR ENERGY DEVICE, THE PRIMARY PURPOSE OF WHICH IS TO PROVIDE FOR THE COLLECTION, STORAGE, AND DISTRIBUTION OF SOLAR ENERGY FOR ELECTRICITY GENERATION, SPACE HEATING, SPACE COOLING, OR WATER HEATING; OR~~

~~(II) A STRUCTURAL DESIGN FEATURE OF A UNIT, THE PRIMARY PURPOSE OF WHICH IS TO PROVIDE FOR THE COLLECTION, STORAGE, AND DISTRIBUTION OF SOLAR ENERGY FOR ELECTRICITY GENERATION, SPACE HEATING, SPACE COOLING, OR WATER HEATING.~~

~~(G) A UNIT OWNER WHO OWNS A UNIT THAT HAS INSTALLED A SOLAR ENERGY SYSTEM MAY NEGOTIATE WITH NEIGHBORING UNIT OWNERS TO OBTAIN A SOLAR EASEMENT THAT SHALL BE RECORDED IN WRITING.~~

~~(H) ANY WRITTEN INSTRUMENT CREATING A SOLAR EASEMENT SHALL INCLUDE:~~

~~(1) A DESCRIPTION OF THE DIMENSIONS OF THE EASEMENT EXPRESSED IN MEASURABLE TERMS, INCLUDING VERTICAL OR HORIZONTAL ANGLES MEASURED IN DEGREES OR THE HOURS OF THE DAY ON SPECIFIED DATES WHEN DIRECT SUNLIGHT TO A SPECIFIED SURFACE OF A SOLAR ENERGY SYSTEM MAY NOT BE OBSTRUCTED;~~

~~(2) THE RESTRICTIONS PLACED ON VEGETATION, STRUCTURES, AND OTHER OBJECTS THAT WOULD IMPAIR THE PASSAGE OF SUNLIGHT THROUGH THE EASEMENT; AND~~

~~(3) THE TERMS UNDER WHICH THE EASEMENT MAY BE REVISED OR TERMINATED.~~

~~[(f)] (1) (1) The declaration or bylaws may give the council of unit owners authority to grant easements, rights of way, licenses, leases in excess of 1 year, or similar interests affecting the common elements of the condominium if the grant is approved by the affirmative vote of unit owners having 66 2/3 percent or more of the votes, and with the express written consent of the mortgagees holding an interest in those units as to which unit owners vote affirmatively. Any easement, right of way, license, or similar interest granted by the council of unit owners under this subsection shall state that the grant was approved by unit owners having at least 66 2/3 percent of the votes, and by the corresponding mortgagees.~~

~~(2) The board of directors may, by majority vote, grant easements, rights of way, licenses, leases in excess of 1 year, or similar interests for the provision of utility services or communication systems for the exclusive benefit of units within the condominium regime. These actions by the board of directors are subject to the following requirements:~~

~~(i) The action shall be taken at a meeting of the board held after at least 30 days' notice to all unit owners and mortgagees of record with the condominium;~~

~~(ii) At the meeting, the board may not act until all unit owners and mortgagees shall be afforded a reasonable opportunity to present their views on the proposed easement, right of way, license, lease, or similar interest;~~

~~(iii) The easement, right of way, license, lease, or similar interest shall contain the following provisions:~~

~~1. The service or system shall be installed or affixed to the premises at no cost to the individual unit owners or the council of unit owners other than charges normally paid for like services by residents of similar or comparable dwelling units within the same area;~~

~~2. The unit owners and council of unit owners shall be indemnified for any damage arising out of the installation of the service or system; and~~

~~3. The board of directors shall be provided the right to approve of the design for installation of the service or system in order to insure that the installation conforms to any conditions which are reasonable to protect the safety, functioning, and appearance of the premises.~~

~~(3) By majority vote, the board of directors may grant to the State perpetual easements, rights of way, licenses, leases in excess of 1 year, or similar interests affecting the common elements of the condominium for bulkhead construction, dune construction or restoration, beach replenishment, or periodic maintenance and replacement construction, on Maryland's ocean beaches, including~~

~~rights in the State to restrict access to dune areas. These actions by the board of directors are subject to the following requirements:~~

~~(i) The action shall be taken at a meeting of the board held after at least 30 days' notice to all unit owners and mortgagees of record with the condominium; and~~

~~(ii) At the meeting, the board may not act until all unit owners and mortgagees shall be afforded a reasonable opportunity to present their views on the proposed easement, right of way, license, lease, or similar interest.~~

~~(4) By majority vote, the board of directors may settle an eminent domain proceeding or grant to the State or any county, municipality, or agency or instrumentality thereof with condemnation authority, perpetual easements, rights of way, licenses, leases in excess of 1 year, or similar interests affecting the common elements of the condominium for road, highway, sidewalk, bikeway, storm drain, sewer, water, utility, and similar public purposes. These actions by the board of directors are subject to the following requirements:~~

~~(i) The action shall be taken at a meeting of the board held after at least 60 days' notice to all unit owners and all first mortgagees listed with the condominium;~~

~~(ii) The notice shall include information provided by the condemnation authority that describes the purpose and the extent of the property being acquired for public use; and~~

~~(iii) At the meeting, the board may not act until all unit owners and mortgagees in attendance have been afforded a reasonable opportunity to present their views on the proposed easement, right of way, license, lease, or similar interest.~~

~~(5) The action of the board of directors granting any easement, right of way, license, lease, or similar interest under paragraphs (2), (3), or (4) of this subsection shall not be final until the following have occurred:~~

~~(i) Within 15 days after the vote by the board to grant an easement, right of way, license, lease, or similar interest, a petition may be filed with the board of directors signed by the unit owners having at least 15 percent of the votes calling for a special meeting of unit owners to vote on the question of a disapproval of the action of the board of directors granting such easement, right of way, license, lease, or similar interest. If no such petition is received within 15 days, the decision of the board shall be final;~~

~~(ii) If a qualifying petition is filed, a special meeting shall be held no less than 15 days or more than 30 days from receipt of the petition. At the~~

~~special meeting, if a quorum is not present, the decision of the board of directors shall be final;~~

~~(iii) 1. If a special meeting is held and 50 percent of the unit owners present and voting disapprove the grant, and the unit owners voting to disapprove the grant are more than 33 percent of the total votes in the condominium, then the grant shall be void; or~~

~~2. If the vote of the unit owners is not more than 33 percent of the total votes in the condominium, the decision of the board or council to make the grant shall be final;~~

~~(iv) Mortgagees shall receive notice of and be entitled to attend and speak at such special meeting; and~~

~~(v) Any easement, right of way, license, lease, or similar interest granted by the board of directors under the provisions of this subsection shall state that the grant was approved in accordance with the provisions of this subsection.~~

~~(6) The provisions of this subsection are applicable to all condominiums, regardless of the date they were established.~~

~~11B-111.6.~~

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) "SOLAR EASEMENT" MEANS AN INTEREST IN LAND THAT:~~

~~(I) IS CONVEYED OR ASSIGNED IN PERPETUITY; AND~~

~~(II) LIMITS THE USE OF THE LAND TO PRESERVE THE RECEIPT OF SUNLIGHT ACROSS THE LAND FOR THE USE OF A LOT OWNER'S SOLAR ENERGY SYSTEM.~~

~~(3) "SOLAR ENERGY SYSTEM" MEANS:~~

~~(I) A SOLAR COLLECTOR OR OTHER SOLAR ENERGY DEVICE, THE PRIMARY PURPOSE OF WHICH IS TO PROVIDE FOR THE COLLECTION, STORAGE, AND DISTRIBUTION OF SOLAR ENERGY FOR ELECTRICITY GENERATION, SPACE HEATING, SPACE COOLING, OR WATER HEATING; OR~~

~~(II) A STRUCTURAL DESIGN FEATURE OF A BUILDING, THE PRIMARY PURPOSE OF WHICH IS TO PROVIDE FOR THE COLLECTION, STORAGE,~~

~~AND DISTRIBUTION OF SOLAR ENERGY FOR ELECTRICITY GENERATION, SPACE HEATING, SPACE COOLING, OR WATER HEATING.~~

~~(B) A LOT OWNER WHO OWNS A DWELLING UNIT THAT HAS INSTALLED A SOLAR ENERGY SYSTEM MAY NEGOTIATE WITH NEIGHBORING LOT OWNERS TO OBTAIN A SOLAR EASEMENT THAT SHALL BE RECORDED IN WRITING.~~

~~(C) ANY WRITTEN INSTRUMENT CREATING A SOLAR EASEMENT SHALL INCLUDE:~~

~~(1) A DESCRIPTION OF THE DIMENSIONS OF THE EASEMENT EXPRESSED IN MEASURABLE TERMS, INCLUDING VERTICAL OR HORIZONTAL ANGLES MEASURED IN DEGREES OR THE HOURS OF THE DAY ON SPECIFIED DATES WHEN DIRECT SUNLIGHT TO A SPECIFIED SURFACE OF A SOLAR ENERGY SYSTEM MAY NOT BE OBSTRUCTED;~~

~~(2) THE RESTRICTIONS PLACED ON VEGETATION, STRUCTURES, AND OTHER OBJECTS THAT WOULD IMPAIR THE PASSAGE OF SUNLIGHT THROUGH THE EASEMENT; AND~~

~~(3) THE TERMS UNDER WHICH THE EASEMENT MAY BE REVISED OR TERMINATED.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.

Approved by the Governor, April 24, 2008.